

Observations by the European Union to the Communicant's commentary on the judgments by the Court of Justice of the European Union of 13 January 2015 in Joined Cases C-401/12 P, C-402/12 P and C-403/12 P and Joined Cases C-404/12 P and C-405/12 P

(ACCC/C/2008/32)

A. Introductory remarks as to the scope and content of the EU observations

1. In its note of 2 March 2015 to the European Commission, the Aarhus Convention Compliance Committee (ACCC) requested the European Union's (EU) comments either on the judgments by the Court of Justice of the European Union (CJEU) of 13 January 2015 and/or the Communicant's commentary on those rulings. The ACCC's request expressly did not cover certain further observations, namely the Communicant's allegations of failing compliance of the "Aarhus Regulation" No 1367/2006¹ with the Aarhus Convention beyond the aspects covered by these judgments.²
2. In the EU's understanding, the ACCC considers that these arguments, which could be deemed to enlarge the scope of the case, are not pertinent at hand, as the ACCC limited the scope only to the alleged incompatibility of the CJEU's case law with Article 9(3) and (4) of the Aarhus Convention.
3. Moreover, in its 2011 report on this case (paragraph 88)³, the ACCC noted that "*it is not examining the Aarhus Regulation or any other internal administrative review procedure*". This is confirmed by the conclusions of the report which only refer to the case-law of the EU courts (paragraphs 97 and 98 of the report).
4. For this reason, the EU replies for the time being to that specific ACCC request, namely to comment on the CJEU's rulings and the Communicant's interpretation thereof (paragraphs 12 to 41 of the commentary). However, the absence of comments on these further allegations does not imply that the EU accepts them as founded, and the EU reserves its right to make supplementary observations on those arguments, should the ACCC make any such request at a later stage.
5. The EU observations will thus first explain the content of the CJEU judgments of 13 January 2015 and their consequences on acts subject to review.
6. Second, they will address more specifically the main arguments raised by the Communicant on the judgments, by also outlining how access to justice is ensured in

¹ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ L 264 of 25.9.2006, p. 13.

² These allegations cover the application of the criterion of individual scope in all requests for internal review addressed to the European Commission (paragraphs 42 to 49 of the commentary), "Acts not adopted under environmental law" (paragraphs 50 to 60), "Acts not having legally binding and external effects" (paragraphs 61 to 71) and "Arbitrary exemptions to the administrative acts definition" (paragraphs 72 to 81).

³ The case was then suspended to await the EUCJ's judgments in cases C-401/12 P to C-403/12 P and C-404/12 P to C-405/12 P.

the EU, in particular in the light of the recent CJEU judgment in Case C-456/13P, *T & L Sugars Ltd and Sidul Acucares/Commission*⁴, which clarifies the scope of Article 263(4) of the Treaty on the Functioning of the European Union (TFEU) and the right of access to justice ensured by national courts of Member States.

B. The appeal judgments

I. Facts of the cases

7. To recall, on the basis of Article 10(1) of the Aarhus Regulation, Dutch organizations for the protection of the environment requested an internal review by the European Commission of:
 - its Decision C (2009)2560 granting the Netherlands an exemption from the obligations laid down in Directive 2008/50/EC on air quality ("Air Quality Directive")⁵, and
 - Regulation 149/2008⁶ adopted by the European Commission and amending Regulation 396/2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin.
8. The European Commission rejected these requests as inadmissible. It based its refusals on the ground that the measures concerned were not measures of individual scope, thereby not constituting administrative acts within the meaning of the Aarhus Regulation.
9. The non-governmental organisations (NGOs) applied for annulment of these inadmissibility decisions before the General Court. It found that both the decision and the regulation could not be regarded as measures of individual scope. As the General Court specified at paragraph 38 of its judgment in Case T-396/09, the decision in question entailed legal effects not only for the Netherlands, but also for all natural or legal persons residing or engaged in activities in the Netherlands zones and agglomerations covered by that decision. Equally, as underlined in paragraph 38 of the judgment in Case T-338/08, the regulation in question applies to persons envisaged generally and in the abstract, that is to say manufacturers, growers, importers or producers and holders of marketing authorisations for plant protection products.
10. The General Court also found that the applicants could question the validity of the Aarhus Regulation in the light of the Aarhus Convention (see paragraph 71 of the judgment in Case T-338/08 and paragraph 59 of the judgment in Case T-396/09). It upheld their respective pleas according to which Article 10(1) of the Aarhus

⁴ ECLI:EU:C:2015:284

⁵ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, OJ L 152 of 11.6.2008, p. 1.

⁶ Commission Regulation (EC) No 149/2008 of 29 January 2008 amending Regulation (EC) No 396/2005 of the European Parliament and of the Council by establishing Annexes II, III and IV setting maximum residue levels for products covered by Annex I thereto, OJ L 58 of 1.3.2008, p. 1.

Regulation is incompatible with Article 9(3) of the Aarhus Convention, because it limits the concept of "administrative acts" to measures of individual scope as defined in Article 2(1)(g) of the Aarhus Regulation. On that basis, the General Court annulled the challenged acts in Cases T-396/09 and T-338/08.

11. The European Commission and the Council appealed these judgments (Joint Cases C-404/12 P and C-405/12 P); the European Parliament only challenged the judgment in Case T-396/09 (Joint Cases C-401/12 P to C-403/12 P).

2. The appeal cases on substance

12. The CJEU confirms (paragraph 52)⁷ that, pursuant to Article 300(7) EC Treaty (now Article 216(2) TFEU), international agreements concluded by the EU bind its institutions and consequently prevail over the acts laid down by those institutions (see, to that effect, the judgment in Case C-308/06, *Intertanko and Others*,⁸ paragraph 42 and the case-law cited).
13. However, when their effects in the EU legal order are not expressly regulated by the agreement, it is for the courts having jurisdiction in the matter and in particular for the CJEU to decide it, in the same manner as any other question of interpretation relating to the application of the agreement in question, on the basis in particular of the agreement's spirit, general scheme or terms (see judgment in Joined Cases C-120/06 P and C-121/06 P, *FIAMM and Others v Council and Commission*,⁹ paragraph 108 and the case-law cited), (see paragraphs 52 and 53).
14. The CJEU also confirms its case-law¹⁰ on the conditions according to which international agreements to which the EU is a party can be relied upon in support of an action for annulment of an act of secondary EU legislation or an exception based on the illegality of such an act with those agreements:
 - 1) the provisions of an international agreement can be relied upon only where the nature and the broad logic of that agreement do not preclude it, and
 - 2) those provisions appear, as regards their content, to be unconditional and sufficiently precise (paragraph 54).
15. With regard to Article 9(3) of the Aarhus Convention, the CJEU concludes that it does not contain any unconditional and sufficiently precise obligation. Since only members of the public who "*meet the criteria, if any, laid down in national law*" are entitled to exercise the rights provided for in Article 9(3), that provision is subject, in its

⁷ Please note that, for ease of reference, it is referred to the judgment in Joined Cases C-401/12 P to C-403/12 P, although on substance the judgment in Joined Cases C-404/12 P and C-405/12 P contains the same elements.

⁸ EU:C:2008:312

⁹ EU:C:2008:476

¹⁰ See judgments in *Intertanko and Others*, paragraph 45; *FIAMM and Others v Council and Commission*, paragraphs 110 and 120; and *Air Transport Association of America and Others*, EU:C:2011:864, paragraph 54.

implementation or effects, to the adoption of a subsequent measure (see judgment in Case C-240/09, *Lesoochranárske zoskupenie*,¹¹ paragraph 45), (see paragraph 55).

16. The CJEU then excludes the application to the situation at stake of its case-law *Fediol* and *Nakajima*¹², according to which, when the EU legislator intends to implement a particular obligation assumed in the context of the agreements concluded within the World Trade Organization or where the EU act at issue refers explicitly to specific provisions of those agreements, the CJEU should review the legality of the act at issue in the light of the rules of that agreement. The CJEU explains that such case-law was justified solely by the particularities of the agreements that were pertinent in those cases (paragraph 57), so that it cannot be extended to the Aarhus Convention (paragraphs 58 and 59).
17. Having quashed the two appealed General Court judgments, since it considered that the state of the proceedings allowed to eventually decide on the applications for annulment of the two challenged inadmissibility decisions, the CJEU rejected them as unfounded. Firstly, the two requests for internal review of Decision C (2009)2560 and Regulation 149/2008 were indeed inadmissible, since the latter are both acts of general scope; secondly, Article 9(3) of the Aarhus Convention lacks the clarity and precision required for that provision to be relied on before the EU judicature for the purposes of assessing the legality of Article 10(1) of the Aarhus Regulation.
18. As a result of the judgments by the CJEU, Commission Decision C(2009) 6121 of 28 July 2009 rejecting as inadmissible the applicant's request for review by the Commission of Decision C(2009) 2560 final of 7 April 2009 and Decisions of the Commission of 1 July 2008 rejecting as inadmissible the requests made by the applicants for review by the Commission of Commission Regulation (EC) No 149/2008 of 29 January 2008 amending Regulation (EC) No 396/2005, quashed previously by the General Court, are re-established *ex tunc*.

B. The EU's observations to the Communicant's commentary on the appeal judgments

19. The Communicant criticizes the appeal judgments by the CJEU. In particular, the Communicant alleges that "*the question of whether limiting administrative and judicial challenges to acts of individual scope is compatible with Article 9(3) of the Convention remains unanswered*" (paragraph 15 of the commentary) and adds, that "*[i]n neither case has the Court decided that the European Commission's decisions are legally correct*" (paragraph 17 of the commentary). In the Communicant's view, the EU would thus be in "*non-implementation of Article 9(3) of the Aarhus Convention*" (see the heading on page 3 of the commentary).

¹¹ EU:C:2011:125

¹² See judgments in cases *Fediol v Commission*, EU:C:1989:254, paragraphs 19 to 23; *Nakajima v Council*, EU:C:1991:186, paragraphs 29 to 32; *Germany v Council*, C-280/93, EU:C:1994:367, paragraph 111; and *Italy v Council*, C-352/96, EU:C:1998:531, paragraph 19.

20. Firstly, the EU would maintain that the comment in paragraph 17 is unfounded. As indicated above, the refusal decisions by the European Commission to allow review of Decision C(2009)2560 and Regulation 149/2008, quashed by the General Court, were re-established *ex tunc*, precisely because the acts whose review was asked were considered to be of general application and thus outside the scope of the Aarhus Regulation.
21. Secondly, as to the argument in paragraph 15 of the Communicant's commentary, the EU would like to observe that the CJEU has ruled that Article 9(3) of the Aarhus Convention is not unconditional and sufficiently precise to be relied upon before the EU judiciary for the purposes of assessing the legality of Article 10(1) of the Aarhus Regulation (see paragraph 68 of the judgment in Joined Cases C-401/12 P to C-403/12 P). It results from this finding that the EU, when deciding that the Aarhus Regulation would give NGOs the right to challenge measures of individual scope, did not fail to comply with Article 9(3) of the Aarhus Convention, because that provision cannot be used as a parameter to assess the validity of the Aarhus Regulation. The Parties to the Aarhus Convention have a margin of appreciation as to how they implement Article 9(3) into their national legal orders, and the EU institutions have exercised this margin in the context of the Aarhus Regulation.
22. Indeed, Article 9(3) of the Aarhus Convention provides for a certain degree of discretion how to grant legal standing to NGOs in order to challenge decisions which may contravene environmental law adopted by the Contracting Parties, as long as the Parties do not set too strict criteria for access to justice (see e.g. page 198 of the Aarhus Convention Implementation Guide 2014). The judgments by the CJEU respect the clear wording of the Convention's provision as interpreted also by the Implementation Guide, namely that the Parties to the Aarhus Convention have a margin of appreciation as to how they implement Article 9(3) into their national legal orders.
23. Thirdly, when assessing whether the EU has correctly implemented Article 9(3) of the Aarhus Convention, it has to be recalled that the Convention is a mixed agreement. It is applied in the EU at three levels:
24. On the first level, the EU aligned its system to Article 9(3) of the Aarhus Convention with regard to its institutions by adopting the Aarhus Regulation. Its Article 12 gives environmental NGOs legal standing before the EU courts to ask for review of decisions, pursuant to the Regulation.
25. On the second level, other pieces of EU legislation applicable to Member States contain express provisions on access to justice for members of the public (NGOs and individuals, under certain conditions), within the meaning of the Aarhus Convention (see paragraph 28 below).
26. On the third level, in so far as the EU has not adopted specific legislation intended to implement Article 9(3) of the Aarhus Convention, it remains a responsibility of the

Member States of the EU to implement their obligations under Article 9 of the Aarhus Convention, which, by virtue of Article 216 TFEU, is part of Union law.

27. Therefore, the EU underlines that the mere scrutiny of a single piece of legislation being the Aarhus Regulation, as suggested by the Communicant, is not enough. Rather, the entire legislative framework of the EU and its judicial order, as well as national legislation and access to national courts in the 28 Member States who are also Parties to the Aarhus Convention needs to be taken into account.
28. Apart from the Aarhus Regulation – which, as outlined, provides for express possibility to contest before EU courts review decisions by institutions, bodies, offices or agencies of the EU under its Article 12 and is thus fully compatible with Article 9(3) of the Aarhus Convention – EU legislation contains further provisions ensuring access to justice to members of the public and NGOs which allow, under certain conditions, to challenge the review decisions adopted by the EU institutions, bodies, offices or agencies before the EU courts.
29. Notably, Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC¹³ provides for access to justice in its Article 6. Furthermore, Article 11 of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment¹⁴ ensures recourse to national courts of Member States with regard to decisions regarding environmental impact assessments covered by it, as does Article 25 of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).¹⁵
30. Provisions on access to justice are further contained in a number of sector-specific legislation, e.g. in Article 13 of Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (ELD-Directive)¹⁶ and Article 23 of Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (Seveso-III-Directive).¹⁷
31. Thus, specific provisions on access to justice are provided for in EU legislation, so that the obligations under Article 9(3) of the Aarhus Convention are fully complied with concerning these substantial areas of environmental law. This is also in line with Article 47 of the Charter of Fundamental Rights of the European Union, which became legally binding on 1 December 2009.

¹³ OJ L 41 of 14.2.2003, p. 26.

¹⁴ OJ L 26 of 28.1.2012, p. 1.

¹⁵ OJ L 334 of 17.12.2010, p. 17.

¹⁶ OJ L 143 of 30.4.2004, p. 56.

¹⁷ OJ L 197 of 24.7.2012, p. 1.

32. In addition, the CJEU:

- recognized the importance of standing for NGOs to ensure the application of EU legislation and the conditions of standing (in Cases C-240/09, *Lesoochránárske zoskupenie ("Slovak Bears")*¹⁸ and C-263/08C, *Djurgården-Lilla*¹⁹);
- clarified the notion of "member of the public" including neighbours (see Case C-570/13, *Gruber*²⁰);
- clarified the scope of review (see Cases C-115/09, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen, ("Trianel")*²¹ and C-72/12, *Altrip*²²); and
- clarified the concept of "not prohibitively expensive" judicial proceedings (see Cases C-206-11, *Köck*²³ and C-530/11, *Commission versus UK*²⁴).

33. Where no specific provision for access to national courts by members of the public is expressly provided under EU legislation governing different sectors of Union law (waste, water, air, nature²⁵), the EU underlines, in accordance with the case-law of the CJEU, that: "*In the absence of EU rules governing the matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law (...), since the Member States are responsible for ensuring that those rights are effectively protected in each case.*" (judgment *Slovak Bears*, paragraph 47). "*In that regard, [...] the obligations [...] which derive from Article 9(3) of the Aarhus Convention with respect to national administrative or judicial procedures [...], as EU law now stands, fall primarily within the scope of Member State law*" (paragraph 60 of the appeal judgment in Joined Cases C-401/12 P to C-403/12 P).

34. The CJEU has thus underlined the importance it gives to Member States' national courts and procedure in the context of Article 9(3) of the Aarhus Convention by imposing an obligation to interpret EU legislation at stake in light of the Convention. In the above-mentioned Case *Slovak Bears*, the CJEU protected the possibility for NGOs to challenge hunting derogations pursuant to the Habitats Directive, by requiring the national judge to interpret the national procedural law in the light of the Aarhus Convention to the fullest extent possible and in light of the principle of effective judicial protection.

35. In addition, the CJEU recognized that, whenever the failure to observe the measures required by the directives which relate to air quality and drinking water, and which are

¹⁸ ECLI:EU:C:2011:125

¹⁹ ECLI:EU:C:2009:631

²⁰ ECLI:EU:C:2015:231

²¹ ECLI:EU:C:2011:289

²² ECLI:EU:C:2013:712

²³ ECLI:EU:C:2013:14

²⁴ ECLI:EU:C:2014:67

²⁵ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ("*Habitats Directive*"), OJ L 206 of 22.7.1992, p. 7.

designed to protect public health, could endanger human health, the persons concerned must be in a position to rely on the mandatory rules included in those directives (see Cases C-361/88, *Commission v Germany*²⁶ and C-58/89, *Commission v Germany*²⁷).

36. It follows from the foregoing that the natural or legal persons directly concerned by a risk that limit-values or alert thresholds may be exceeded, must be in a position to require the competent authorities to draw up an action plan where such a risk exists, if necessary by bringing an action before the competent courts (judgment of 25 July 2008 in Case C-237/07, *Janecek*²⁸ and judgment of 19 November 2014 in Case C-404/13, *Client Earth*²⁹). In these cases, the applicants precisely brought cases before their national courts which then asked the preliminary questions to which the CJEU replied, thereby clarifying the law.
37. Therefore, Article 9(3) of the Aarhus Convention is also complied with in those sectors, because Member States have to ensure effective judicial protection through their courts which can be seized by NGOs and individuals according to conditions set out in national law of Member States.
38. Finally, with regard to the absence of express horizontal EU legislation intended to implement Article 9(3) of the Aarhus Convention, the EU recalls that it is inherent in the system of the Union that the EU can only act in full respect of the "principle of subsidiarity" (Article 5(3) of the Treaty on European Union, TEU). This principle clarifies that, in areas which do not fall within its exclusive competence, as indeed is the case for access to justice, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States either at central level or at regional and local level, but can rather by reason of the scale or effects of the proposed action, be better achieved at Union level.
39. In case the EU did not act, pursuant to Article 2(2) TFEU, Member States shall exercise their competence to the extent that the EU has not exercised its competence ("*When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.*").
40. This means that, when assessing compliance by the EU with its obligations under Article 9(3) of the Aarhus Convention, its Member States' legislations or court systems, where no express legislation exists at Union level, have to be duly taken into account. The Communicant neglected this point both in the original communication as well as in the commentary. Nor does the Communicant make any allegation that the Member

²⁶ ECLI:EU:C:1991:224
²⁷ ECLI:EU:C:1991:391
²⁸ ECLI:EU:C:2008:447
²⁹ ECLI:EU:C:2014:2382

States' system of access to justice would be incompliant with Article 9(3) of the Aarhus Convention.

41. The system of access of justice in the EU is not limited to ensuring that acts and/or omissions by the institutions, bodies, offices and agencies can be challenged before the EU courts under Article 263(4) TFEU.³⁰ Judicial review is to be ensured also by the courts and tribunals of the Member States through the possibility of challenging, by a plea of illegality, acts of general scope requiring implementing measures before national courts, by asking preliminary questions to the CJEU in that respect.
42. In Case *T & L Sugars Ltd*, cited above, the CJEU recognised this possibility and declared with regard to regulatory acts when they entail implementing measures, judicial review of compliance with the EU legal order is ensured irrespective of whether those measures were adopted by the EU or the Member States. Natural or legal persons who are unable, because of the conditions governing admissibility laid down in Article 263(4) TFEU, to challenge a regulatory act of the EU directly before the EU judicature are protected against the application to them of such an act by the ability to challenge the implementing measures which the act entails (see paragraph 30 of the judgment and the case-law cited therein).
43. It is also stated that, where responsibility for the implementation of a regulatory act³¹ lies with the institutions, bodies, offices or agencies of the EU, natural or legal persons are entitled to bring a direct action before the EU judicature against the implementing acts under the conditions stated in Article 263(4) TFEU, and to plead in support of that action, pursuant to Article 277 TFEU, the illegality of the basic act at issue.
44. Where that implementation is a matter for the Member States, those persons may plead the invalidity of the basic act at issue before the national courts and tribunals and cause the latter to request a preliminary ruling from the CJEU, pursuant to article 267 TFEU (judgments in *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P,³² paragraph 93, and *Telefónica v Commission*, C-274/12 P,³³ paragraph 29).
45. The CJEU thus clarifies that the conditions of admissibility laid down in Article 263(4) TFEU must be interpreted in the light of the fundamental right to effective judicial protection, but such an interpretation cannot have the effect of setting aside those conditions, which are expressly laid down in that Treaty paragraph 44 of the judgment; see also, to that effect, judgment in *Inuit*, paragraph 98 and the case-law cited).
46. However, judicial review of compliance with the European Union legal order is ensured, as can be seen from Article 19(1) TEU, not only by the CJEU but also by the courts and tribunals of the Member States. The TFEU has, by Articles 263 TFEU and

³¹ Defined in Article 290 TFEU as being of general application.

³² EU:C:2013:625

³³ EU:C:2013:852

277 TFEU, on the one hand, and Article 267 TFEU, on the other, established a complete system of legal remedies and procedures designed to ensure judicial review of the legality of acts of the institutions, and has entrusted such review to the EU judicature (paragraph 45 of the judgment, see also judgments in *Inuit*, paragraphs 90 and 92, and *Telefónica*, C-274/12 P, paragraph 57).

47. In that connection, it must be emphasised that, in proceedings before the national courts, individual parties have the right to challenge before the courts the legality of any decision or other national measure relative to the application to them of a EU act of general application, by pleading the invalidity of such an act (paragraph 46 of the judgment; see, to that effect, also judgments in *E and F*, C-550/09,³⁴ paragraph 45, and judgment in *Inuit*, paragraph 94).
48. The EU is therefore in line with the CJEU case-law (paragraph 47 of the judgment) which maintains that references on validity constitute, like actions for annulment, means for reviewing the legality of EU acts (judgments in *Zuckerfabrik Süderdithmarschen* and *Zuckerfabrik Soest*, C-143/88 and C-92/89,³⁵ paragraph 18; *ABNA and Others*, C-453/03, C-11/04, C-12/04 and C-194/04,³⁶ paragraph 103; and *Inuit*, paragraph 95). As the CJEU stated that the national courts or tribunals have to stay proceedings and make a reference to the CJEU for a preliminary ruling on the act's validity, the CJEU alone having jurisdiction to declare an EU act invalid (see paragraph 48 of the judgment).
49. Finally, the CJEU declared that, as regards persons who do not fulfil the requirements of Article 263(4) TFEU for bringing an action before the EU Courts, it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the fundamental right to effective judicial protection (paragraph 49 of the judgment; see also judgment in *Inuit*, paragraph 100 and the case-law cited).
50. That obligation on the Member States was reaffirmed by the second subparagraph of Article 19(1) TEU, which states that Member States "*shall provide remedies sufficient to ensure effective judicial protection in the fields covered by EU law*" (see judgment in *Inuit*, paragraph 101). That obligation also follows from Article 47 of the Charter as regards measures taken by the Member States to implement Union law within the meaning of Article 51(1) of the Charter (paragraph 50 of the judgment).
51. The quoted case-law outlines that the acts of the EU institutions are subject to judicial review of their compatibility with, in particular, the Treaties, the general principles of law and fundamental rights, as enshrined in the Charter of Fundamental Rights of the European Union (see, to that effect, also Case C-550/09, *E and F*,³⁷ paragraph 44).

³⁴ EU:C:2013:852

³⁵ EU:C:1991:65

³⁶ EU:C:2005:741

³⁷ ECLI:EU:C:2010:382

52. In conclusion, the TFUE has established a complete system of remedies and procedures intended to ensure the control of the lawfulness of acts of the institutions by entrusting this control to the EU judiciary, acting in cooperation with national courts, where appropriate. The different possibilities of access to justice are therefore in line with the Aarhus Convention and in particular its Article 9(3) which expressly refers to "*administrative or judicial procedures*", implying that the Parties may decide to implement this provision by means of either type of procedure or by a combination of both. Therefore, the EU fulfils its obligations under Article 9(3) of the Aarhus Convention.
53. Finally, the "*alternative legal reasoning*" evoked by the Communicant in paragraphs 25 to 37 of its commentary, where the Communicant argues that the European Court of Justice "*could have clearly taken another legal route*", disregards these judgments by the CJEU and cannot replace what the CJEU found, as stated under Part I.
54. On the basis of these observations, the EU considers the critical arguments by the Communicant with regard to Joint Cases C-404/12 P and C-405/12 P and Joint Cases C-401/12 P to C-403/12 P as unfounded and concludes that the EU fulfils its obligations under Article 9(3) of the Aarhus Convention.